REMARKS/ARGUMENT

Applicants note that rejection of claims 6 – 8, 18 and 20 under 35 U.S.C. § 112, second paragraph has been withdrawn and rejection of claims 1 – 3 and 11 – 15 under 35 U.S.C. § 101 has been withdrawn.

The September 23, 2004 Office Action has rejected all pending claims under 35 U.S.C. § 102(b) and proffered a double patenting rejection. In light of the amendments above, the arguments below and the enclosed Declaration, Applicants respectfully request reconsideration.

§ 102 Rejection

The September 23, 2004 Office Action rejects claims 1 – 3 and 11 – 15 under 35 U.S.C. § 102(b) as being anticipated by Hessner, et al. The Examiner characterizes Hessner, et al. as disclosing characterization, construction and complementation of *puf* knockout mutants.

Applicants disagree with the Examiner's characterization of Hessner, et al. and have enclosed a Declaration of Dr. Mary Lynne Perille-Collins, one of the named inventors of the above-identified application. Dr. Perille-Collins is familiar with Hessner, et al. and distinguishes Hessner, et al. from the present invention.

Dr. Perille-Collins agrees that in both Hessner, et al. and the present invention *puf* gene mutants are constructed and complemented by DNA fragments. However, in Hessner, et al. an expression vector was not used. The DNA vectors for complementation were delivered by a cloning vector. The vector has cloning sites and facilitates cloning because the cloned fragment can interrupt a reporter gene

(LacZ). In fact, Dr. Perille-Collins points out that Hessner, et al. specifically show that expression of the *puf* gene is not due to vector sequences but to the endogenous promoter. (See Declaration, paragraph 3)

In paragraph 4, Dr. Perille-Collins has listed specific indicia that the *puf* genes of Hessner, et al. were not expressed from the vector sequence.

Thus, Applicants have demonstrated that Hessner, et al. do not teach the elements of claims 1 – 3 and 11 – 15 nor make them obvious. One of skill in the art would not review Hessner, et al. and understand that one could construct a method of expressing proteins in an expression vector with a regulatable promoter expressible in *Rhodospirillum rubrum* and express the protein within the host, wherein the host has extra capacity for membrane formation. (See Declaration, paragraph 4.) Hessner, et al. simply does not contemplate protein expression in this manner. Applicants have amended claims 1 and 13 to clarify this aspect of the invention. Claims 1 and 13 now clarify that the protein or peptide is operably connected to the regulatable promoter.

Double Patenting Rejection

Claims 1 – 3 and 11 – 15 are rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 – 8 of U.S. Patent No. 6,680,179. Applicants have enclosed a Terminal Disclaimer.

Applicants believe that all claims are now in condition for allowance. No fees are believed necessary to enter this response. However, if any fees are necessary, please charge Deposit Account 17-0055.

Respectfully submitted,

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